IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

MACA.No. 563 of 2003(D)

OPMV.427/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY
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APPELLANT/PETITIONERS:
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1. MUHAMMED KUNHI MUSLIYARAKATH,
S/O. ABDUL RAHIMAN, AGED 77 YEARS,
ACHUMMAD LAKSHAM VEEDU COLONY, KUNHIMANGALAM,
KANNUR DISTRICT.

2. IBRAHIM,
S/O. MUHAMMED KUNHI MUSLIYARAKATH, AGED 38 YEARS,
RESIDING AT ACHUMMAD LAKSHAM VEEDU COLONY,
P.O. KUNHIMANGALAM, KANNUR DIST.

3. AYISHA,
D/O. MUHAMMED KUNHI MUSLIYARAKATH, AGED 34 YEARS,
RESIDING AT ACHUMMAD LAKSHAM VEEDU COLONY,
P.O. KUNHIMANGALAM, KANNUR DIST.

4. SAFIYATH,
D/O. MUHAMMED KUNHI MUSLIYARAKATH, AGED 26 YEARS,
RESIDING AT ACHUMMAD LAKSHAM VEEDU COLONY,
P.O. KUNHIMANGALAM, KANNUR DIST.

5. HAMSAKUTTY,
S/O. MUHAMMED KUNHI MUSLIYARAKATH, AGED 21,
RESIDING AT ACHUMMAD LAKSHAM VEEDU COLONY,
KUNHIMANGALAM, KANNUR DIST.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENTS: RESPONDENTS:

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1. K.RAJU, S/O. KANTHAVEL REDDIAR,
AGED 62 YEARS, NEAR BUS STAND, VERIDHU NAGAR,
KAMARAYAR DIST., TAMIL NADU.

2. N.KASTHURI, W/O. NAGASUNDARAM,
78/2/1 J.C. COLONY, RAMAMOORTHY ROAD,
VERUDHU NAGAR, TAMIL NADU.

3. UNITED INDIA INSURANCE COMPANY LIMITED,
74, RAILWAY FEEDER ROAD, VERUDHU NAGAR ROAD,
TAMIL NADU.

4. ACHUMADATH MUTHALIB, S/O. MUHAMMED,
AGED 32, KUNHIMANGALAM AMSOM DESOM,
THALAYI, KANNUR DIST.

5. K.V.MAMMU, S/O. IBRAHIM,
KUNHIVALAPPIL HOUSE, P.O. PATTANNUR,
(VIA) MATTANNUR, KANNUR DIST.

6. THE NEW INDIA ASSURANCE CO. LTD.,
BRANCH OFFICE, NEAR MUNICIPAL BUS STAND,KANNUR-1.

BY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 19/01/2007, ALONG WITH MACA 566/03 AND OTHER CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

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M.A.C.A. NOs. 563, 566, 662 & 763 OF 2003

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Dated this the 19th day of January, 2007.

J U D G M E N T

Krishnan,J.

These four appeals had arisen out of the death caused in a road accident. MACA 662/03 is filed by the New India Assurance Company against the award in OP(MV) 503/97 and MACA 763/03 is filed by the claimants challenging the quantum of compensation awarded in the case. MACA 563/03 and MACA 566/03 are filed by the claimants against the award passed by the Tribunal in OP (MV) 427/97 and 393/97 respectively. The Tribunal found the driver of the jeep which is insured with the New India Assurance Company is negligent and directed the company to pay the compensation. In the other two cases OP(MV)Nos. 427 and 393/07 the same Tribunal found that the accident took place on account of the negligence of the lorry driver and directed the compensation to be paid by the United India Insurance Company. In these three cases three passengers who were traveling in the jeep sustained grievous injuries and succumbed to the same. Two of them were brothers. The New India Assurance Company the insurer of the

jeep had filed the appeal challenging the finding of the negligence. It is seen that as per the award passed in O.P.(MV)393/97 and 427/97 dated 31/12/02 the Tribunal found that the driver of the lorry is responsible for the accident and directed the United India Insurance Company to satisfy the award. In the other case, insurance company of the jeep namely New India Assurance Company was directed to satisfy the award. So the very same Tribunal has given two different findings with respect to the same accident. The award in O.P.(MV)393/97 and 427/97, as far as the company is concerned, has become final and United India Insurance Company has not challenged the finding of negligence. In the other case the finding of negligence on the jeep driver is challenged. A perusal of the award would show that it was a head on collision between the jeep and the lorry. Jeep was proceeding from north to south and the lorry from the opposite direction. The road was having a width of 5.45 meters at the accident site and the accident took place 2.25 meters west of the eastern tar end which would reveal that the driver of the jeep was not totally on the wrong side. There is no contention that there was any curve affecting the sight on the place of accident and certainly both the drivers could have seen the vehicle coming from the opposite direction from a reasonable distance and if they had bestowed

care and attention both the drivers would have been in a position to avert the accident. Recently, the Apex court has also held that when there is a head on collision and unless exceptional circumstances are proved to show that one of the driver alone was negligent it has to be held that the accident took place on account of the composite negligence of both the drivers. We feel that in the facts and circumstances of the present case it is almost a head on collision and the accident had taken place almost on the middle of the road and therefore the driver of the jeep as well as that of the lorry are equally responsible and therefore we apportion the negligence at 50% each on the New India Assurance Company as well as on the United India Insurance Company.

2. The next question to be considered is regarding the quantum of compensation in O.P.(MV) 503/97. According to the claimants therein who are the mother, sisters and brothers of the deceased, the deceased was returning back to the gulf country wherein he was employed as a driver and while proceeding the unfortunate accident took place which resulted in his death. He was aged 27 years and was unmarried. The factum that he was employed in gulf country is not of very much in controversy. Visa, Passport etc. are produced to show his employment. We feel it is only just and reasonable to fix his income at Rs.4,000/- for the

purpose of calculating the compensation. When 1/3rd is so deducted the annual dependency shall be Rs.32,000/- and by applying a multiplier of 13 it will be Rs.4,16,000/-. The Tribunal has awarded a compensation of Rs.1,98,000/- and therefore the claimants are entitled to an additional compensation of Rs.2,28,000/- in O.P.(MV) 503/97. So far as other heads are concerned adequate compensation has been granted.

3. Now, it is desirable to consider the case of the claimants in MACA 563/03. The claimants are the father, brothers and sisters of the deceased who died in the road accident. Deceased was aged 16 years at the time of the accident and all the others were elder to him and the real dependent was only the father. Admittedly the father was aged more than 70 years at the time of the accident. The Tribunal has taken the income at Rs.1,500/- and applied a multiplier of 5 after deducting 1/3rd for the personal expenses awarded a compensation of Rs.60,000/- towards loss of dependency and another Rs.25,000/- under other heads. The Tribunal has taken note of the entire situation but has omitted to grant any compensation under the head of loss of estate. Therefore, it requires interference only to the extend of awarding the additional compensation of Rs.2,500/- under the head of loss of estate.

4. The next question is regarding MACA 566/03. Here the claimants are the legal heirs of the deceased who died in a road accident. He was unmarried at the time of the accident. He was employed also. The Tribunal took the income but deducted almost 2/3rd and awarded only Rs.30,000/- towards loss of dependency and awarded another Rs.25,000/- under different heads. This approach cannot be accepted. When a person gets married in the process of time there will be corresponding increase in his earnings also and therefore when the Tribunal has not taken into consideration the enhanced income of the deceased, certainly it is only just and correct to deduct 1/3rd for the personal expenses and if it is done then the dependency loss would have to be increased to Rs.60,000/- instead of Rs.30,000/-. In this case also no amount is awarded under the head of loss of estate for which another sum of Rs.2,500/- has to be granted. Therefore, the additional amount awarded is Rs.32,500/-. Thus the claimants will be entitled to Rs.87,500/- that is 32,500/- more.

5. In the result, appeals are disposed of as follows:

(1) MACA 662/03 is allowed thereby the negligence is apportioned and 3rd respondent New India Assurance Company and 6th respondent United India Insurance Company are directed

to deposit the amount of compensation at the rate of 50% each in all the cases.

2) In OP(MV) 503/97, i.e., MACA 763/03 the claimants are awarded an additional compensation of Rs.2,28,000/- with 7% interest on the said sum from the date of petition till realisation and New India Assurance Company and United India Insurance Company are directed to deposit the amount in equal halves. It is also made clear that for the amount already awarded, the United India Insurance Company is directed to deposit 50% of the amount and that has to be reimbursed to New India Assurance Company if it had deposited already. Otherwise, it shall be given to the petitioners in O.P.(MV)503/97.

(3) In MACA 563/03 the claimants are awarded an additional compensation of Rs.2,500/- with 7% interest from the date of petition till realisation and insurance companies namely R3 and R6 are directed to deposit this additional amount equally. In these cases New India Assurance Company is directed to deposit 50% of the award amount as well for the reason that they are also liable in equal halves.

4) MACA 566/03(OP(MV)393/97) the claimants are awarded an additional compensation of Rs.32,500/- with 7% interest from the date of petition till realisation and both the

companies are directed to deposit the amount in equal halves. Here also the New India Assurance Company is directed to deposit 50% of the amount which is already awarded by way of compensation because of the reason of change on finding of question of negligence.

Appeals are disposed of accordingly.

K.S. RADHAKRISHNAN, JUDGE.

M.N. KRISHNAN, JUDGE.

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